

REGARDING THE TRAGEDY AT
THE TEXAS AGGIE BONFIRE OF
TEXAS A&M UNIVERSITY

HON. JOE BARTON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 18, 1999

Mr. BARTON of Texas. Mr. Speaker, I speak today with great sadness about a tragedy which happened early this morning at Texas A&M University. A great tradition that all Aggies hold very dear—Texas Aggie Bonfire—collapsed, killing at least six people and injuring as many as 25. My thoughts and prayers are with the parents who lost children, and the students who lost friends. Texas A&M is a family, and today the Aggie Family is in shock, grieving for our dead and injured students.

For those of you who have not ever heard of Texas A&M Bonfire, it is one of the most cherished Aggie traditions. Traditions are very important at Texas A&M. The bonfire tradition revolves around building and burning the world's largest bonfire. In past years, it has soared over 100 feet high and burned all night. This year's bonfire was scheduled to be over 60 feet high and burn until after midnight.

Aggie Bonfire has been a tradition at Texas A&M since 1909 when they used it to stay warm during the "Yell Practice" on the night before the annual A&M-Texas football game. The bonfire represents everything Aggies are about: hard work, unity, dedication, and loyalty. It also represents a burning desire for A&M to defeat the Longhorn football team.

Several thousand members of the student body contribute in one way or another to building bonfire. When I was a freshman at Texas A&M, I participated in Bonfire by going out to "cut". The "cut" area is selected a few months before the football game against t.u. Areas are selected that need to be cleared for construction and then the work begins. The entire bonfire is built the "Aggie" way. Trees are cut down by hand, they are lifted and carried out of the woods on shoulders, they are loaded onto trucks by hand, unloaded by hand, stacked by hand and wired into stack by hand. In my sophomore year, I was "promoted" to the stack area and helped erect the actual bonfire.

It is often said that if other schools had a tradition like this they would probably contract it out to the lowest bidder and then all show up just to watch it burn, but not the Aggies. Not only do we do it all ourselves but we do it the hard way. The building of bonfire builds character. The hard work and sacrifice of time teaches a good work ethic that is not soon forgotten.

What does it mean to be a Texas Aggie? A&M is a special place. Values are taught both in the classroom and out of the classroom. Aggies live our traditions and cherish them, and pass them onto their children. I have three children, two have graduated from A&M and my youngest daughter will enter A&M next Fall. In spite of the tragedy that has occurred, it is my hope that Bonfire continues in the great spirit in which it embodies, and that my daughter Kristin will help build it in years to come.

TEAR DOWN THE USTI WALL;
DROP THE CHARGES AGAINST
ONDREJ GINA

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 18, 1999

Mr. SMITH of New Jersey. Mr. Speaker, in recent weeks, we have seen a number of historic dates come and go, with appropriate commemoration. November 9, for example, marked the tenth anniversary since the fall of the Berlin Wall. Yesterday, November 17, is recognized as the commencement of the Velvet Revolution which unleashed the forces of democracy against the totalitarian regime in Czechoslovakia. To mark that occasion, George Bush, Margaret Thatcher, Mikhail Gorbachev and other former leaders from the day met with President Vaclav Havel in Prague.

Beyond the symbolism of those dates, they have had other meaning. Many of us had hoped that the wall in Usti nad Labem, Czech Republic—a symbol of racism—would be brought down on the anniversary of the fall of the Berlin Wall. Regrettably, November 9, came and went, and the Usti Wall still stood.

We had hoped that the Usti Wall would come down on November 17. Some Czech officials even hinted this would be the case. Regrettably, November 17 has come and gone, and the Usti Wall still stands.

Now, I understand some say the Usti Wall should come down before the European Union summit in Helsinki—scheduled for December 6. Mr. Speaker, the Usti Wall should never have been built, and it should come down now, today. As President Reagan exhorted Mr. Gorbachev more than ten years ago, so I will call on Czech leaders today:

Tear down the Usti Wall.

Last fall, a delegation from the Council of Europe visited Usti nad Labem. Afterwards, the Chairwoman of the Council's Specialist Group on Roma, Josephine Verspaget, held a press conference in Prague when she called the plans to build the Usti Wall "a step towards apartheid." Subsequently, the United States delegation to the OSCE's annual human rights meeting in Warsaw publicly echoed those views.

Since the construction of the Usti Wall, this sentiment has been voiced, in even stronger terms, by Ondrej Gina, a well-known Romani activist in the Czech Republic. He is now being prosecuted by officials in his home town of Rokycany, who object to Gina's criticisms. The criminal charges against Mr. Gina include slander, assault on a public official, and incitement to racial hatred. In short, Mr. Gina is being persecuted because public officials in Rokycany do not like his controversial opinions. They object to Mr. Gina's also using the word "apartheid."

I can certainly understand that the word "apartheid" makes people feel uncomfortable. It is an ugly word describing an ugly practice. At the same time, if the offended officials want to increase their comfort level, it seems to me that tearing down the Usti Wall—not prosecuting Ondrej Gina—would be a more sensible way to achieve that goal. As it stands, Mr. Gina faces criminal charges because he exercised his freedom of expression. If he is convicted, he will become an international

cause célèbre. If he goes to jail under these charges, he will be a prisoner of conscience.

Mr. Speaker, it is not unusual for discussions of racial issues in the United States to become heated. These are important, complex, difficult issues, and people often feel passionate about them. But prosecuting people for their views on race relations cannot advance the dialogue we seek to have. With a view to that dialogue, as difficult as it may be, I hope officials in Rokycany will drop their efforts to prosecute Mr. Gina.

RESIDENTIAL LOAN SERVICING CLARIFICATION ACT

HON. EDWARD R. ROYCE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 18, 1999

Mr. ROYCE. Mr. Speaker, the legislation I am introducing today addresses a technical problem that residential loan servicers have encountered in complying with the federal Fair Debt Collection Practices Act ("FDCPA"). Creditors collecting their own debts are already exempt from the FDCPA, which is aimed at regulating the practices of independent debt collectors. When a residential loan servicer acquires a servicing portfolio, it is generally exempt from the FDCPA under the creditor exemption. However, a question arises when loans in a portfolio are delinquent at the time they are acquired, since the creditor exemption does not apply to debts that were "in default" at the time the servicer acquired them. This limitation to the creditor exemption has created considerable uncertainty in the mortgage servicing industry. In order to avoid possible liability, many loan servicers have been attempting to comply with the FDCPA by applying it to every loan, whether it was delinquent or not, when they acquired the servicing rights.

The disclosures required of debt collectors under the FDCPA, however, create particular difficulties for residential mortgage loan servicers. In addition to its substantive anti-abuse protections for the debtors, the FDCPA requires a debt collector to notify the borrower in the initial written or oral communication with the borrower that it is attempting to collect a debt and that any information obtained will be used for that purpose (the so-called "Miranda" warning), requires in each subsequent communication to indicate that the communication is from a debt collector, and requires that the debt collector provide a written debt validation notice within five days after the initial communication, which allows the borrower to dispute all or any portion of the debt within 30 days. The debt validation provisions also create additional complexity for servicing activities due to restrictions or making any "collection" efforts during the thirty day validation period. These informational requirements dictate that the loans subject to the FDCPA must get different communications from the servicer throughout their maturity, and thus require that the loans be identified and specially designated, creating additional costs without any additional protections or benefits provided to the borrowers.

Moreover, consumers are not well-served when the servicer feels compelled to make the FDCPA's disclosures. Residential mortgage

loan servicers are generally not true debt collectors even if they may be deemed to be a "debt collector" under the FDCPA with respect to a small percentage of their loans. A separate set of rules in the Real Estate Settlement Procedures Act requires servicers of first lien loans to provide notices related to the borrower's right when servicing is transferred. The special FDCPA notices may convey the misleading impression that the loan has been referred to a traditional, independent debt collector, when, in fact, all that has happened is that the servicing rights have been transferred from one servicer to another—often as part of a larger portfolio of performing loans.

As an alternative to following the special procedural requirements of the FDCPA, some servicers decline to accept any delinquent loans. When an acquiring loan servicer takes this approach, the perverse result may be that the holder of the servicing rights who no longer wishes to service these loans may subject these delinquent loans to more aggressive collection action than would otherwise take place if the acquiring servicer had been willing to accept those loans.

The legislation I am proposing here today is intended to address the problems created when the FDCPA's procedural requirements are applied to residential mortgage loan servicers. The legislation would apply only to first lien residential mortgage loans that are acquired by bona fide loan servicers, not professional debt collectors. It would exempt them only from the "Miranda" notice and the debt validation provisions of the FDCPA.

Importantly, all of the substantive protections under the FDCPA would continue to apply to any loan as to which the servicer is not exempt as a creditor. These provisions will allow residential mortgage loan servicers to treat the few loans subject to the FDCPA in the same way they treat all other loans and will thus reduce unnecessary administrative costs incurred identifying and separately handling these accounts. In addition, once a servicer is considered a "debt collector" under the FDCPA, the borrower would have a right to request a "validation statement"—a statement of the amount necessary to bring the loan current and to pay off the loan in full as of a particular date.

I think it is also important to note that this proposed legislative clarification has the full support of the Federal Trade Commission, the agency with enforcement jurisdiction over the FDCPA. As a matter of fact, the FTC has consistently gone on record in its Annual Report to Congress as supporting legislative clarification in this area. The FTC's 21st Annual Report to Congress provides as follows:

Section 803 (6) of the FDCPA sets forth a number of specific exemptions from the law, one of which is collection activity by a party that "concerns a debt which was not in default at the time it was obtained by such a person." The exemption was designed to avoid application of the FDCPA to mortgage servicing companies, whose business is accepting and recording payments on current debts. (March 19, 1999 Report)

The report then goes on to make specific recommendations to Congress:

The Commission believes that Section 803 (6)(F)(iii) was designed to exempt only businesses whose collection of delinquent debts is secondary to their function of servicing current accounts. . . . Therefore, the Commission

recommends that Congress amend this exemption so that its applicability will depend upon the nature of the overall business conducted by the party to be exempted rather than the status of individual obligations when the party obtained them.

I am pleased that several of my colleagues on the House Banking and Financial Services Committee, namely Reps. JACK METCALF (WA) and WALTER JONES (NC), are also sponsoring what I hope will be bipartisan legislation to clarify the FDCPA as it applies to residential loan servicers. Mr. Speaker, I hope we can move early in the next session to address this issue in both Committee and on the House floor.

IN MEMORY OF WILLIE J. COTTON, JR.

HON. BOB ETHERIDGE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 18, 1999

Mr. ETHERIDGE. Mr. Speaker, I rise today in honor of the grandfather of Bailey Cotton, Seth Cotton, Emma Cotton, Justin Sloan, Matthew Evans and Leslie Evans; the father of Betty Evans, June Sloane and Dwight Cotton and the husband of Iris Lee Cotton. I rise in honor of Mr. Willie J. Cotton, Jr. who passed away on October 27.

Mr. Cotton was a native of Harnett County, North Carolina. He was a past county commissioner and served Harnett County in office for 12 years. Mr. Cotton served our country in World War II and was a lifelong member of Kipling United Methodist Church.

As North Carolina's former Superintendent of public education, I know what a battle it is to build quality schools for our children. Improving schools for our children is my life's work. Mr. Cotton took this battle on as a county commissioner to build better schools in Harnett County. There aren't many times that a person in public service takes a stand for the good of future generations that can cost them their political career. He knew he could lose but he voted anyway, and children in my home county have been in modern facilities since 1975. My own children and the children of Harnett county owe thanks to a man most of them never knew.

That is why, Mr. Speaker, I stand here today: To honor Mr. Cotton and to pay my respects to his family and my debt of gratitude. We have lost a great man, and I am proud to continue his fight for better schools for our children.

THE SMALL BUSINESS FRANCHISE ACT

HON. HOWARD P. "BUCK" McKEON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 18, 1999

Mr. McKEON. Mr. Speaker, I am a recent cosponsor of H.R. 3308, the Small Business Franchise Act introduced by Representative HOWARD COBLE. Today, I include for the RECORD testimony from a recent Judiciary Commercial and Administrative Law Subcommittee hearing on this legislation. During

this hearing a constituent of mine, Patrick Leddy, testified about his dealings as a franchise owner. Because of his very moving testimony, I became a cosponsor of this legislation. I wish to thank him for his words and include them in the RECORD today.

STATEMENT OF PATRICK JAMES LEDDY, JR.

My name is Patrick James Leddy Jr. I have owned and operated a Baskin-Robbins 31 Flavors franchise in Newhall, California since August 1, 1986, a total of 13 years. I am also a 26 year veteran firefighter with the Los Angeles City Fire Department. I purchased my franchised business to supplement my income, and to prepare my wife and I for our retirement. In 1996 my wife and I became very discouraged with the manner in which our Franchisor, which is a wholly owned subsidiary of a foreign corporation, was treating its franchisees. After careful consideration and after seeing sales at our fellow franchisee's stores plummet as a result of the placement of new stores and drastic changes to the system which we had originally purchased, we decided to sell our store.

In February of 1997, three months after notifying Baskin-Robbins that we were interested in selling our store, we received a notification that Baskin-Robbins was considering a location for a new store located in a shopping mall, a mere two miles from my store and well within the market from which we draw a large number of our customers.

Later that month my wife and I met with our district manager to discuss our ability to sell our store and the tremendous impact the new store would have on our existing store. To our surprise the representative from Baskin-Robbins agreed with us, and suggested that if Baskin-Robbins were to go forward with this plan, how would we feel if they were to purchase our store, and then sell both our store and the new store as a package to a new buyer? We agreed that this would be acceptable to us. Whereafter, the Baskin-Robbins representative offered us \$40,000 dollars less than what I had paid for this store seven years earlier, and after an additional \$70,000 dollars I paid for improvements which were required by Baskin-Robbins. We were appalled at this offer, but were advised by the Baskin-Robbins representative that we really should consider his offer, because if Baskin-Robbins does elect to place this new store at the proposed location, our store wouldn't even be worth that amount.

Thereafter in April of 1997, and pursuant to an internal policy of Baskin-Robbins, and which is rarely followed by the company, I submitted to my district manager my response to this Baskin-Robbins proposed new location. He assured me that he would notify me of any developments as they occur, and that we would be notified promptly, once a determination had been made.

In June of 1997, after several unsuccessful attempts to learn whether Baskin-Robbins would proceed with the new store my wife called our district manager and explained to him that we needed immediate information on what the company intends to do about this new site, because we have had several prospective buyers for our store that were disinterested once we disclosed to them Baskin-Robbins plan. The Baskin-Robbins representative advised us not to disclose the information about the new store to our prospective buyers.

In July of 1997, our local neighborhood magazine publications reported that a new Baskin-Robbins would be open two miles from our store. We were shocked. Two days after this news story appeared, and after numerous telephone calls to Baskin-Robbins on our part, we finally received official notification from Baskin-Robbins about the new store.